

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 32**

**THE HOSPITAL COMMITTEE FOR THE
LIVERMORE-PLEASANTON AREAS D/B/A
VALLEYCARE MEDICAL CENTER**

Employer

And

Case 32-RC-223731

**CALIFORNIA NURSES
ASSOCIATION/NATIONAL NURSES UNITED
(CNA/NNU)**

Petitioner

**REGIONAL DIRECTOR'S DECISION AND
DIRECTION OF ELECTION**

The Petitioner Union seeks a self-determination election under the Board's *Armour-Globe*¹ doctrine to determine whether a group of 41 regular and per-diem registered nurses (RNs) who work at two of the Employer's facilities, one located in Livermore and the other in Dublin, California, wish to be included in an existing unit of approximately 400 registered nurses who work at the Employer's acute care hospital located in Pleasanton, California. The Union does not seek to represent the RNs in the petitioned-for group in a separate unit.

The Employer disputes the appropriateness of the petitioned-for voting group on the basis that it would result in a combined unit, which would be nonconforming under the Board's Health Care Rule.² Alternatively, the Employer argues that if the Region finds the existing unit to be nonconforming, the addition of RNs who work at the Livermore and Dublin facilities would foreclose the possibility of those two facilities being combined in a separate conforming unit, and therefore, the petition should be dismissed. Additionally, the Employer contends that the petitioned-for RNs do not share a community of interest with the RNs in the existing bargaining unit. Lastly, in its oral argument, the Employer cited cases that rely on the Board's a single-facility rebuttable presumption to support its argument that the petition should be dismissed.

The Petitioner, on the other hand, contends that the existing unit is nonconforming because it excludes nonsupervisory RNs at the hospital, as well as all of the RNs at the Dublin and Livermore facilities, which the Petitioner argues, are a part of the same hospital. The

¹ *Armour & Co.*, 40 NLRB 1333 (1942), and *Globe Machine Stamping Co.*, 3 NLRB 294 (1937).

² 29 CFR §103.30 (1990).

Union's position is that the petitioned-for voting group shares a community of interest with the employees in the existing bargaining unit, and constitutes an identifiable, distinct segment of the Employer's unrepresented employees, and that, therefore, an *Armour-Globe* election is appropriate.

Two hearing officers of the Board conducted a hearing in this matter and the parties made oral arguments, which I have duly considered. As explained below, I have concluded that, (1) the Health Care Rule does not prevent the inclusion of the petitioned-for voting group in the existing bargaining unit; (2) the petitioned-for voting group shares a community of interest with employees in the existing unit; (3) the petitioned-for RNs constitute an identifiable, distinct segment of the Employer's unrepresented employees; and (4) the single-facility presumption is inapplicable to the situation at hand, and multi-facility bargaining is appropriate. Accordingly, I find that the petitioned-for voting group is appropriate and I am directing an election therein.

STATEMENT OF FACTS

The Hospital Committee for the Livermore-Pleasanton Areas d/b/a ValleyCare Medical Center (the Employer) is a non-profit California that operates an acute care hospital in Pleasanton, California (the Pleasanton facility or main hospital), where the Employer's Human Resources office (HR) is also located. Approximately two miles from the main hospital, in Dublin, California, the Employer maintains a facility (the Dublin facility) where it operates an urgent care center, a sports medicine department, and an occupational health department that employees system-wide are required to use under certain circumstances, as discussed below. Approximately eight miles from the main hospital, in Livermore, California, the Employer maintains a facility (the Livermore facility) where it operates an ambulatory surgery center (ASC), an urgent care center, a laboratory, an imaging center, and a skilled nursing facility (SNF). The Livermore facility also houses administrative offices. The Employer serves patients in the Pleasanton, Dublin, and Livermore areas of Northern California at these three suburban facilities. In addition, the Employer has another facility in Pleasanton, which is referred to as "the Stoneridge" facility where the Employer maintains a cancer center, a women's imaging center, a diabetic-bariatric nutrition clinic, materials management services, and a Coumadin clinic. Only one RN, a "patient navigator," works at the Stoneridge facility. All parties agree that patient navigators are excluded from both the existing unit and the petitioned-for group.

Pursuant to a Stipulated Election Agreement, the Region conducted an election on April 18, 2018, and on April 26, 2018, the Region certified the Petitioner as the representative of the Employer's employees in the following unit:

All full-time and regular part-time Registered Nurses, including those who serve as relief charge nurses and orthopedic coordinators, employed by the Employer at its facilities located at 5555 W. Las Positas Blvd., Pleasanton, California; excluding all other employees, nurse educators, patient navigators, infection control nurses, case managers, quality management specialists, lactation consultants, wound care nurses, RNs employed

by registries or other agencies providing outside labor to the Employer, nurse administrators, managerial employees, confidential employees, office clerical employees, guards, and supervisors (including charge nurses), as defined in the Act.

The Pleasanton Facility

The Pleasanton facility is the main hospital and houses an inpatient emergency services unit (ER), an intensive care unit (ICU), a medical-surgical unit, operating rooms (ORs), a catheterization laboratory, and an imaging center. Some of the more demanding and highly skilled surgeries are performed at the Pleasanton facility, including open heart surgery. This procedure necessitates a special heart/lung machine valued at approximately \$150,000 and is unique to Pleasanton. Aside from this piece of equipment, the record does not specify any other significant differences in the equipment utilized by the different facilities.

The RNs in the ORs in the Pleasanton hospital work 8-hour, 10-hour, and 12-hour shifts. OR RNs serve as the patient's advocate during a procedure. When OR RNs are "circulating," they act as the patient's advocate. Some of their duties include reviewing the patient's charting and interviewing the patient to ensure that the scheduled procedure conforms with their expectations, checking forms, noting allergies, intubation, prepping, positioning, preparing the room by gathering the necessary instruments and medications, bringing the patient in to the operating room, assisting the anesthesiologist to connect the patient monitors, and inducing anesthesia. After the procedure, the RNs take the patients to the Post Anesthesia Care Center (PACU), for recovery. When OR RNs are "scrubbing," their duties are to maintain a sterile field for the procedure and to pass instruments to the surgeon. OR RN Denise Mavrogianis testified that at the Pleasanton hospital there are pre-operation RNs, OR RNs, and PACU RNs, and that their duties vary.

The duties of the PACU RNs in Pleasanton are to care for patients who have come out of the OR. The PACU RNs connect their patients to monitors, perform an assessment, and manage pain. For outpatient surgeries, patients are given instructions and discharged. For inpatient surgeries, patients are handed off to the medical-surgical unit.

In addition to these approximately 400 RNs there are approximately 34 RNs who work at Pleasanton in seven different classifications that are excluded from the bargaining unit and currently not represented: case managers, nurse educators, wound care nurses, lactation nurses, quality management nurses, infection control nurses, and a patient navigator. Like their represented counterparts, these RNs hold the same California certifications and are placed in the same wage scale as the represented RNs. They work exclusively in Pleasanton. No party contends that the excluded RNs share an overwhelming community of interest with the petitioned-for RNs.

The Dublin Facility

Located approximately two miles from the Pleasanton facility, the Dublin facility is comprised of two separate buildings. One houses the Employer's physical and sports medicine department. The other building has a physical sports medicine annex, one of the Employer's two urgent care centers, and the Employer's occupational health department where all RNs are periodically required to appear for TB screening and a fit test for N95 respirators. They also are required to go to occupational health for work-related injuries. The urgent care centers provide services to patients who need treatment for urgent non-emergency issues such as flu, colds, minor fractures and lacerations, and urinary tract infections. The urgent care clinics are staffed by three regular RNs and five per diem RNs. The urgent care clinics are open seven days a week from 10 a.m. to 7 p.m. Urgent care RNs either work their entire shift in one of the two clinics, or work at both of the sites for part of the day providing break relief for other RNs. The full day shifts are typically scheduled from 10 a.m. to 8 p.m., and from 11 a.m. to 4:30 p.m. Some of the basic duties of the urgent care RN's are to triage patients, provide medications as ordered by physicians, start IVs, and dress wounds. The record does not describe the services provided at the sports medicine department and annex. All of the RNs working at the Dublin facility are currently unrepresented and are part of the petitioned-for voting group.

The Livermore Facility

The Livermore facility includes an urgent care center, an ambulatory surgery center (ASC), an urgent care center, a laboratory, an imaging center, and a skilled nursing facility (SNF). The Livermore facility also houses administrative offices. The ASC provides prescheduled, outpatient, same-day surgeries, such as cosmetic surgery, dental, eye, gastroenterology, and podiatry procedures. RN's in the ASC work 8-hour shifts, Monday through Friday. The ASC is not open on weekends or holidays. Nurses in the ASC either work in the pre-operation capacity or in the PACU recovery unit. There are currently four regular RNs and one per-diem RN in the ASC OR, and 12 to 15 RNs in the ASC pre-op and PACU units.

The SNF, located at the Livermore facility, provides care for patients who need ongoing treatment. The SNF houses 26 beds and is open 24 hours a day, seven days a week. Patients stay at the SNF 14 days on average. There are eleven RNs in the SNF, who either work a morning shift, an evening shift, or a night shift. SNF RNs assess and evaluate patients, watch for any changes of conditions, administer IV fluids and medications, and make care plans.

All of the RNs working at the Livermore facility are currently unrepresented and are part of the petitioned-for voting group.

A. Board Law

The Board's Health Care Rule (the Rule), which was designed to prevent an undue proliferation of units in acute care settings, sets forth eight units that are appropriate units in an

acute care hospital setting, with the only appropriate unit of RNs being a unit including “all registered nurses.”³

The Board has found that where a petitioner is not seeking to create an additional unit, but is seeking to add employees to a preexisting nonconforming unit, a self-determination election is appropriate even if the resulting unit would also be a nonconforming unit. *St. Vincent Charity Medical Center*, 357 NLRB 845, 855 (2011). The applicable standard for evaluating the appropriateness of adding additional employees to a preexisting bargaining unit is the Board’s *Armour-Globe*⁴ doctrine. Under the *Armour-Globe* doctrine, employees sharing a community of interest with an already represented unit of employees may vote whether they wish to be included in the existing bargaining unit. *NLRB v. Raytheon Co.*, 918 F.2d 249, 251 (1st Cir. 1990). An incumbent union may petition to add unrepresented employees to its existing unit through an *Armour-Globe* election if the employees sought to be included (1) share a community of interest with unit employees and (2) “constitute an identifiable, distinct segment so as to constitute an appropriate voting group.” *Warner-Lambert Co.*, 298 NLRB 993, 995 (1990).

It is well established that a certifiable unit need only be an appropriate unit, not the most appropriate unit. *International Bedding Company*, 356 NLRB No. 168, slip op. at 2 (2011), citing *Morand Bros. Beverage Co.*, 91 NLRB 409, 418 (1950), enfd. 190 F.2d 576 (7th Cir. 1951). See also *Boeing Co.*, 337 NLRB 152, 153 (2001) (“If [the petitioned-for] unit is appropriate, then the inquiry into the appropriate unit ends.”) The Board looks to a variety of factors to determine whether a community of interest exists, including the nature of employee skills and functions; common supervision; the degree of functional integration; interchangeability and contact among employees; work sites; general working conditions and fringe benefits; and bargaining history. *International Bedding Company*, supra, slip op. at 2; *Boeing Co.*, supra at 153; *NLRB v. Paper Mfrs. Co.*, 786 F.2d 163, 167 (3rd Cir. 1984); *Rinker Materials Corp.*, 294 NLRB 738, 738-739 (1989). The petitioner’s position regarding the scope of the unit is also a relevant consideration. *International Bedding Company*, supra, citing *Marks Oxygen Co.*, 147 NLRB 228, 230 (1964); *E.H. Koester Bakery & Co.*, 136 NLRB 1006, 1012 (1962). However, that issue is not dispositive with regard to what constitutes an appropriate unit, and certain proposed units, such as those based on an arbitrary, heterogeneous, or artificial grouping of employees will be found to be inappropriate. See *Moore Business Forms, Inc.*, 204 NLRB 552, 553 (1973).

It is well established that interchangeability refers to temporary work assignments or transfers between two groups of employees. Frequent interchange “may suggest blurred departmental lines and a truly fluid work force with roughly comparable skills.” *Hilton Hotel Corp.*, 287 NLRB 359, 360 (1987). As a result, the Board has held that the frequency of employee interchange is a critical factor in determining whether employees who work in

³ 29 CFR Sec. 103.30(a).

⁴ *Armour & Co.*, 40 NLRB 1333 (1942), and *Globe Machine & Stamping Co.*, 3 NLRB 294 (1937).

different groups share a community of interest sufficient to justify their inclusion in a single bargaining unit. *Executive Resource Associates*, 301 NLRB 400, 401 (1991), citing *Spring City Knitting Co. v. NLRB*, 647 F.2d 1011, 1015 (9th Cir. 1081). Also relevant to our inquiry is the amount of work-related contact among employees. Thus, it is important to compare the amount of contact employees in the unit sought by a union have with one another. See for example, *Casino Aztar*, 349 NLRB 603, 605-606 (2007). The Board traditionally gives more weight to temporary transfers for operational reasons than to voluntary transfers of employees who desire to relocate themselves on a permanent basis. *Michigan Bell Telephone Company*, 216 NLRB 806 (1975).

The Board has found that, in examining supervision, most important is the identity of employees' supervisors who have the authority to hire, to fire or to discipline employees or to supervise the day-to-day work of employees, including rating performance, directing and assigning work, scheduling work, and providing guidance on a day-to-day basis. *Executive Resources Associates*, supra at 402; *NCR Corporation*, 236 NLRB 215 (1978). Common supervision weighs in favor of placing the employees in dispute in one unit. However, the fact that two groups are commonly supervised does not mandate that they be included in the same unit, particularly where there is no evidence of interchange, contact or functional integration. *United Operations*, supra at 125. Similarly, the fact that two groups of employees are separately supervised weighs in favor of finding against their inclusion in the same unit. However, separate supervision does not mandate separate units. *Casino Aztar*, supra at 607, fn 11. Rather, more important is the degree of interchange, contact, and functional integration. *Id.* at 607.

Ordinarily, when considering a multi-facility operation, the Board holds that a petitioned-for single-facility-unit is presumptively appropriate for collective bargaining. *Hilander Foods*, 348 NLRB 1200 (2006), *Bowie Hall Trucking*, 290 NLRB 41', 42 (1988). However, that presumption does not apply where a petitioner seeks a multi-facility unit, even if the employer contends that a single-facility unit is appropriate. *Hazard Express, Inc.*, 324 NLRB 989 (1997); *Capital Coors Co.*, 309 NLRB 322, n. 1(1992).

In determining whether a petitioned-for multi-facility unit is appropriate, the Board evaluates the following community-of-interest factors among employees working at the different locations: similarity in employees' skills, duties, and working conditions; centralized control of management and supervision; functional integration of business operations, including employee interchange; geographic proximity; bargaining history; and extent of union organization and employee choice. *Exemplar, Inc.*, 363 NLRB No. 157 (2016); *Clarian Health Partners, Inc.*, 344 NLRB 332, 334 (2005).

B. Application of Board Law to this Case

(1) The Impact of the Health Care Rule

As indicated above, the existing unit includes approximately 400 full-time and regular part-time RNs who work at the main hospital, but excludes approximately 34 RNs with the job titles of case managers, nurse educators, wound care nurses, lactation nurses, quality management nurses, infection control nurses, and a patient navigator who are RNs and also work at the main hospital. Notwithstanding these undisputed facts, the Employer contends that the certified unit is a conforming unit because it is comprised of all *acute care* nurses and that the inclusion of the Livermore and Dublin RNs in the proposed voting group would render the existing unit nonconforming.

I find the Rule to be unambiguous in that for a unit of RNs at an acute care hospital to be conforming “all registered nurses” must be included. The Rule clearly distinguishes between acute and non-acute hospitals but not between acute care and non-acute care nurses. I conclude that the existing unit is nonconforming because it is a subset of all nonsupervisory RNs employed by the Employer at its acute care hospital. Accordingly, the proposed voting group is not inappropriate on the basis that it would render the existing unit nonconforming. The existing unit is already nonconforming.

With respect to the Employer’s alternative argument that if the Region found the existing unit to be nonconforming, the petition should be dismissed because the inclusion of the RNs who work at the Livermore and Dublin facilities in the existing unit would foreclose the possibility of those two facilities potentially being organized into a separate conforming unit, I find that argument unpersuasive. The record establishes that neither the Livermore nor the Dublin facility, or a combination of the two, constitute acute care facilities to which the Rule would apply.

The Union argues that the existing bargaining unit is also a nonconforming unit due to the exclusion from it of nurses working at the Employer’s Dublin and Livermore facilities. I note that the RN working at the Employer’s Stoneridge facility is also excluded. Here, having already found that the existing unit is nonconforming, I do not find it necessary to pass on whether the existing bargaining unit is also nonconforming for additional reasons; however, I note that in *Child’s Hospital Inc.*, 307 NLRB 90 (1992), the Board declined to apply the Rule to a hybrid, acute and non-acute, health care system.

(2) Community of interest

The Employer contends that the petitioned-for RNs do not share a community of interest with the RNs in the existing unit in Pleasanton because the petitioned-for RNs do not provide acute care to patients while the bargaining unit nurses do. The Employer also points out that the hiring decisions are made at the local facility and that employee interchange is insignificant. The Union contends that the Employer operates as a single network, that the three facilities are functionally integrated both as to the services provided and as to the employees who provide those services. Although I find that the majority, but not all, hiring decisions are made at each local facility, and that the day-to-day supervision is generally done by the charge nurses and managers at each facility, I do not find that these factors outweigh the other factors that show a strong overlap of common interests between the two groups. I conclude, for the reasons explained below, that the proposed voting group shares a community of interest with the existing unit of employees.

Nature of employee skills and functions

RNs at all three facilities are required to maintain a California nursing license and, at a minimum, a basic life support certification (ACLS, and the BLS certifications), although some positions also require advanced cardiac life support (ACLS), required at PACU in Pleasanton and Livermore, and pediatric advanced life support (PALS), required at PACU in Pleasanton only. RNs from all three facilities attend classes together every two years at the Livermore facility to maintain their life support certifications. RNs from all three facilities attend trainings together as required by HR. For example, RNs from surgical services at both Pleasanton and Livermore attend “skills day” trainings together once per year. The Employer regularly distributes a bulletin about safety to all RNs in all three facilities. RNs are held to the same standards. For example, the Association of Operating Room Nurses (AORN) standards are common to all OR RNs employed at the Employer’s facilities.

The Employer’s position is that the Pleasanton RNs’ skills and functions are essentially different from those in Livermore and Dublin because of the diverse nature of the treatments and surgeries provided at each facility. For example, the Employer posits that the Livermore and Dublin facilities do not have the capability of performing surgeries such as open heart, bariatric, complex orthopedic, and other complex and life-saving procedures performed in Pleasanton. Based on this, the Employer asserts that the Pleasanton RNs’ skills are different from those RNs performing eye surgeries, dental surgeries, and staffing the urgent care departments in Livermore and Dublin. However, the record reflects that RNs in all three facilities share the same basic duties including circulating patients, scrubbing, using identical charting systems, and using the same procedures to handle drugs. They are also required to have the same training and certifications, and are held to the same professional work standards. Moreover, the argument that the level of skill is fundamentally different is countered by the fact that Livermore and Dublin RNs are capable of and often do assist in Pleasanton facility procedures including some of those

same surgeries that the Employer lists. The Livermore and Dublin RNs, time after time, are able to and do, without additional training, relieve Pleasanton nurses during breaks and perform the same duties as their Pleasanton counterparts, such as moving the patients and helping position the patients, helping administer anesthesia put the patients to sleep, performing sharps and needle counts, and, in some cases, performing instrument counts with the scrub tech.

The record establishes that invasive surgeries are not confined to the main hospital but are also performed in Livermore. Specifically, the record reflects that the AFS follows similar procedures in its surgical process as in the ORs in Pleasanton. In fact, the whole department was recently transferred from Pleasanton to Livermore, including multiple RNs. The Employer argues that the RNs' work is more challenging in Pleasanton than in Livermore and Dublin but the evidence presented at hearing does not support the assertion that RNs' work in Pleasanton is uniformly more challenging. For example, a complex surgical procedure where there are front and back incisions and flip of the patient in Livermore can last for six hours while a patient may be treated for an ingrown toenail in Pleasanton under local anesthesia.

The Employer argues, and the record supports that, complicated surgeries such as open heart surgery require a higher degree of skill and more specialized equipment than any other surgery or procedure performed at Livermore and Dublin. However, the record also indicates that only about of five out of the 15 to 16 nurses that work in the operating room at Pleasanton, compared to the approximately 400 RNs in the bargaining unit, actually assist in open heart surgeries. While it is undisputed that some differences in required certifications exist, for example, RNs at the PACU in Pleasanton are required to have pediatric advanced life support (PALs) certifications not required elsewhere, these differences do not outweigh the similarities. On the contrary, the record shows that the majority of RNs in Pleasanton share similar licensing and training with RNs in Livermore and Dublin. Denise Mavrogianis, an OR RN in Pleasanton, who scrubs and circulates, testified that when she floats to Livermore she performs the same types of duties. Mavrogianis is one of the RNs who has participated in at least one open heart surgery. The record contains abundant examples that attest to the similarity of functions between a number of RNs in the existing unit and the petitioned-for group, and very limited examples of differences.

In sum, I find that the nature of the RNs skills is a factor that weighs in favor of finding that both groups share a community of interest.

Common supervision

The three facilities share common supervision at the upper level by President Scott Gregerson. Beneath Gregerson is Chief Operating Officer Tracey Lewis Taylor and Chief Nursing Officer Gina Teeples. Beneath COO Taylor is Executive Director of Interventional Services Jennifer Berg, who has oversight of the Employer's surgical services. Berg testified that Interventional Services includes the cath lab, pre-op, PACU, CPD, OR, and GI services, which are located in Pleasanton. However, ASC is also a component of Interventional Services but is located in Livermore. Executive Director of Operations Ryann DeGraff has oversight of the

Employer's urgent care services located in Livermore and Dublin. Beneath CNO Teeples is Director of Skilled Nursing Mary Kay Dunn. Directly below these managers are the charge nurses at each of the facilities.

It is undisputed that charge nurses are statutory supervisors and are the first line of supervision to which all RNs at the three facilities directly report. If a particular charge nurse is unavailable, RNs contact the manager in charge. For example, at ASC in Livermore, the charge nurses report directly to Executive Director Berg in Pleasanton. In the Livermore SNF, above the charge nurses are Manager Laurel Sharpe and Director Mary Kay Dunn. At the Dublin facility, above the charge nurses are Department Manager Anita Petagara and Director Ryann DeGraff. In the Pleasanton OR, above the charge nurses is manager Aaron (last name unknown), who reports to Director of Interventional Services Monica Davilla. Above the charge nurses in the Pleasanton PACU unit are Manager Jolene Duffy and Director Davilla. COO Lewis and Director DeGraff "do rounds" at the Dublin and Livermore facilities on a regular basis by informally checking-in with employees to find out how are they doing and inviting them to raise concerns, and CNO Teeples performs occasional "rounding" at the SNF.

Executive Director Jennifer Berg testified about the Employer's hiring process. According to her, charge nurses receive the job applications, perform an initial review, and select applicants to be interviewed. At that point Berg gets involved in the process and makes hiring decisions in conjunction with the supervisors. Berg makes the ultimate hiring decision at ASC. Additionally, she testified that at Pleasanton, the charge nurse there along with other managers make the hiring decisions.

Charge nurse Alyssa Kabahit testified that she is the charge nurse for both urgent care units at Dublin and Livermore, splitting half of her time at each facility. Her duties include staffing, scheduling, evaluations, unit-based education, unit-based improvement projects, reviewing timecards, and day day-to-day unit issues. Her immediate supervisor is Anita Petagara, Clinic Manager for urgent care as well as occupational health, based in Dublin. Kabahit testified that she is responsible for scheduling and day-to-day operations at her facility with no input from managers located in Pleasanton. With respect to hiring, she testified that she participates in the hiring process and that the final decision rests with Petagara.

RN Belinda Gorospe, who normally works in Livermore, testified that she calls Assistant Director of Nursing in Pleasanton to troubleshoot when the charge nurse is unavailable, for example during the night shift. RN Hughes testified that when her charge nurse is not available, she contacts Jennifer Berg directly. In the evenings, when the SNF pharmacy is closed, RNs in the Livermore SNF contact the Pleasanton pharmacy for any medication issues that come up. When ASC Livermore charge nurse Marisa House was out for surgery for a period of several weeks, charge nurse Mary Magistrado, temporarily transferred from Pleasanton to ASC to cover for House. There is some evidence that vacation schedules are approved by managers who are higher up, such as SNF manager Laurel Sharpe.

In short, despite some common supervision, record shows a degree of local autonomy with respect to the RNs' day-to-day work. As to those supervisors who have the authority to hire and fire, with some exceptions such as Executive Director of Interventional Services Jennifer Berg, who participates in hiring decisions both in Pleasanton and at the ASC in Livermore, these decision are made mostly at each facility. However, it is undisputed that when RNs are floating, they share common supervision with the RNs at the local facility. I find that this factor weighs somewhat against finding that a community of interest exists.

Degree of Functional Integration

All three facilities operate under the same state "General Acute Care Hospital" license. All three facilities utilize a common charting software system, EPIC. The record reflects that patients are transferred among the facilities as follows. Most of the patients in the SNF are transferred over from the Pleasanton hospital. When SNF patients have a change in condition, they are generally transferred back to the Pleasanton ER for further evaluation, although there are rare occasions when a patient is transferred to another hospital when specialized care is needed such as, for example, if a patient sustains a head injury. If any complications arise during an outpatient surgery at the Livermore ASC, then the patient is transferred to the ER or OR in Pleasanton. Patients who arrive at the urgent care centers with serious health problems, such as a stroke or a heart attack, are transferred to the ER in Pleasanton. Patients are transferred from the urgent care clinics to the ER on a daily basis. Understandably, urgent care RNs do not wait for ER RNs to intervene. Urgent care RNs start IVs and perform electrocardiograms (EKGs), as needed until the patient is transported to the ER. When patients are handed off from one facility to another, the attending RNs have contact with the RNs at the receiving facility to provide report.

RNs at all three locations use the same email system and receive common email communications. The record also reflects that there is some exchange of equipment between the facilities, for example, the ASC in Livermore may request tools and instruments from the hospital when needed. Some RNs from all three facilities attend monthly nurse practice and informatics council to go over policies and procedures and any updates that go out to the entire three-facility system.

With respect to drugs, floating RNs access drugs for their patients the same way they do at their home facility through the Employer's MedSelect system by entering their employee number and their personal four-digit passcode, which allows them to bring up all patients system-wide. Using this multi-facility system, they request the needed drug, which is then released.

In view of these facts, I find that there is a high degree of functional integration between the three facilities.

Centralized Control of Labor Relations

All three facilities are served by a common HR department located in Pleasanton and operate under the same Employer policies, which are uniformly applied. Specifically, the same employment application process, employee handbook, grievance procedure, evaluation system, benefits, pay, safety and occupational health program apply to both the RNs in the existing unit and the petitioned-for RNs. There is no evidence in the record that would establish that the Livermore or Dublin facilities have the right to select or reject any of the benefits offered by the Employer to the Pleasanton employees. On the contrary, there is ample evidence of an overall, uniform approach to employment matters.

Interchangeability and Contact among Employees

The Employer claims that there is minimal interchange and contact between the RNs in the existing unit and the RNs in the petitioned-for group, while the Union claims that the interchange and contact is frequent and substantial. The evidence in the record supports a finding that there is substantial interchange and contact among the two groups.

With respect to permanent transfers, the record reflects, as noted above, that multiple RNs, including Diane Hughes, transferred permanently from Pleasanton to Livermore when ASC moved from Pleasanton to Livermore. The record does not reflect the number of permanent transfers that were involved in the move of the ASC from Pleasanton to Livermore or generally as to other permanent transfers system-wide.

With respect to work-related contact among employees, as discussed earlier, the record reveals that the Employer has a floating system in place that requires RNs to temporarily transfer to other facilities. Accordingly, RNs float among the three facilities. The floating is not regularly scheduled in advance but varies depending on patient demands and staffing levels. RNs are informed of this requirement upon hire. For example, RNs who normally work in the Livermore ASC are required to report to work at Pleasanton on an as needed basis, and vice-versa. The floating is not limited by department and RNs can be sent basically everywhere, but generally RNs from medical-surgical float to the other location medical-surgical, ICU to and from ER, etc. RN Diane Hughes, who works in the Livermore ASC, testified that RNs from her department float to Pleasanton as needed due to short-staffing, and vice versa. Hughes estimated that RNs from Pleasanton have floated to the ASC from Pleasanton about 30 times in the last year. Pleasanton OR RN Denise Mavrogianis testified that she has floated to the ASC twice in the three months before the hearing, and Pleasanton PACU RN Shauna McDonnell testified that she has floated to the ASC twice in the past 2 years. Hughes recalled that she has floated to the operating room in Pleasanton facility about three times in the last two years. SNF RN Belinda Gorospe testified that it is mandatory to float to the Pleasanton facility, and she estimated that she has floated to the Pleasanton hospital about 20 times in the last year. Gorospe testified that she floats mostly to the medical-surgical unit, but has also floated to the ER and the ICU. Recently, the Employer created a "float pool" of RNs who will be the first to be selected when floating is necessary. When RNs are floating, they report to the charge nurse on duty where they are transferred. Occasionally, urgent care RNs float to the ER in Pleasanton, and RNs working in

PACU Pleasanton float to PACU in Livermore but the record does not disclose the frequency with which such floating happens.

In spite of the ample testimonial evidence in the record that RNs from both groups float between the three facilities, the Employer argues that the amount of floating is insignificant relative to the size of the existing unit. I note that the Employer had the opportunity to provide documents under its control that would have established the precise frequency of the floating but did not avail itself of that opportunity. Therefore, I rely on the evidence elicited during the hearing.

Additional contact between the RNs at the three facilities occurs when patients are transferred from one facility to another, for example, when patients that arrive at urgent care need to be sent to the ER. There is further contact when RNs attend training together, utilize the Employer's required occupational health services at the Dublin Facility, and attend social events such as retirement parties, birthdays, and baby showers. Employees from the three facilities also attend a common annual holiday party. I find that the record reveals evidence of significant employee interchange and contact between the employees in the existing unit and those who the Union seeks to include.

Work sites

As mentioned above, the three facilities are located within an eight-mile radius. In view of the fact that the employees are customarily required to float, complete courses, report to HR, etc., I do not find it significant that the three facilities are not contiguous but are instead located two to eight miles from one another. Considering that some RNs are regularly scheduled to work in Dublin and Livermore, and are required to float between the facilities, I find that the facilities' geographical proximity to weigh in favor of finding that a community of interest exists.

General working conditions:

All benefit-eligible RNs in the three facilities receive the same benefit package, which includes health insurance, visual, dental, and retirement plan, commuter mass transit, etc. They also accrue paid time off and extended sick leave under the same formulas, and enjoy the same holidays. They are paid according to the same pay scale. The same grievance procedure applies to all RNs at all three facilities. RNs in all three facilities receive the same standardized evaluations, and are subject to the same evaluation process. Personnel rules are uniform throughout. For example, if an RN is out ill for more than three days, regardless of the location of his or her work assignment, the RN must check with the Employer's Occupational Health office in Dublin before returning to work. As noted previously, all RNs are periodically required to appear at the Employer's Occupational Health facility such as for TB screening and a fit test to operate N95 respirators, flu shots, and other tests. They also are required to go to occupational health for work-related injuries.

RNs at all three facilities receive the same employee benefits and are paid on the same payroll schedule. RNs at all three facilities are provided with the same employee uniforms,

although the uniforms vary in color by department. RNs' employee badges provide them with access to all three facilities. The three facilities utilize a common timekeeping system, which allows them to clock in and out at any of the three facilities, as needed. The three facilities utilize a common telephone system, which allows employees from all three facilities to communicate internally by dialing extension numbers. RNs from all three facilities attend new-hire orientations together. The uniform working conditions with respect to benefits, evaluation, disciplinary, and personnel policies support a conclusion that the RNs at all three facilities share a community of interest.

Bargaining history

Having only been unionized since April of this year, only a very limited bargaining history exists at the Pleasanton facility over the existing unit. The composition of the bargaining unit is unchanged since its certification on April 26, 2018. I find that this factor does not weigh for or against finding the petitioned-for voting group to be appropriate.

After examining the record as a whole, I have concluded that the overall similarity of skills and functions, some commonality of supervision, centralized control of labor relations, geographical proximity, contact and interchange between the represented employees and the petitioned-for employees, and functional integration of the Employer's facilities establish a sufficient community of interest among them to warrant a finding that the Livermore and Dublin full-time and per diem RNs can appropriately be included in the existing unit of RNs. In sum, I find that the frequency of contact and interchange, similar terms and conditions of employment, and degree of functional integration of the three facilities favor a finding that the two groups show a strong community of interest.

(3) The petitioned-for employees constitute an identifiable, distinct segment of the Employer's unrepresented employees

The petitioned-for regular and per-diem registered nurses are clearly set apart from the rest of the workforce at Livermore and Dublin by their special skills, training, work locations, and specific terms and conditions of employment, including being subject to similar licensing requirements, job functions, and working conditions. They are also distinct from the Pleasanton and Stoneridge case managers, nurse educators, wound care nurses, lactation nurses, quality management nurses, infection control nurses, and the patient navigator with whom they do not share functions and supervision, and have little contact. The parties do not dispute, and I find that they constitute an identifiable, distinct segment of the Employer's employees.

(4) Single-facility presumption and the appropriateness of multi-facility bargaining

The Employer cites *Lawrence+Memorial Corporation*, Cases 01-RC-134298 and 01-RC-134311, where another Region of the Board issued a Decision and Direction of Election (DDE) finding, among other things, that a group of licensed practical nurses (LPNs) working at another one of the employer's facilities did not share a sufficient community of interest with the

employees in an existing technical unit of an acute care hospital to warrant an *Armour-Globe* election. I note that in that case, the petitioner did not seek review of the DDE and, therefore, the Board did not pass on whether the Regional Director erred in finding that an *Armour-Globe* election was not warranted. The Board denied the Request for Review in which the employer had argued that the only appropriate unit was a system-wide unit, a question that the Employer has not placed before me here. I find *Lawrence+Memorial* to be inapplicable here. I also note that the facts of that case differ substantially from the facts in the instant case. Significantly, *Lawrence+Memorial* did not involve an existing unit of RNs and a petitioned-for group of RNs. Instead, the duties and skills of the service and maintenance employees at the acute care hospital were found to be distinct from the LPNs who worked in a physician's office setting. In the instant case, I find that duties of the RNs in the petitioned-for group are similar to the duties of the RNs in the existing unit. In *Lawrence+Memorial*, the working conditions of the two groups were also distinct, with separate human resources departments for each facility, which used its own electronic medical records systems. In addition, LPNs at the different sites never filled in for one another, there was no evidence of permanent interchange, and very little evidence of any work-related contact. I find that the community of interest factors in the instant case are significantly stronger than in *Lawrence+Memorial*.

In addition, by citing *Sutter West Bay Hospitals*, 357 NLRB 197 (2011), the Employer appears to argue that the Region should adhere to the presumption that a single facility is appropriate and that a multi-facility unit is inappropriate. I find *Sutter West* to be inapplicable to the case at hand. In *Sutter West*, the petitioner sought to represent a single-facility unit. It is undisputed that the Pleasanton single-facility bargaining unit is an appropriate unit. The question in the instant case is whether the multi-facility unit being sought through an *Armour Globe* petition is also appropriate. For the same reasons that I find that the petitioned-for employees share a community of interest with the existing unit, I also find that a multi-facility unit would be appropriate, should the voting group elect to be included in that unit. Accordingly, I find that the petitioned-for voting group is appropriate and I am directing an election therein.

CONCLUSIONS AND FINDINGS

I have carefully weighed the record evidence and the arguments of the parties, and I conclude that it is appropriate to hold a self-determination election among the employees in the petitioned-for voting group. Based upon the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of Section 2(6), (7), and (14) of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.⁵

3. The Petitioner is a labor organization within the meaning of Section 2(5) of the Act.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The following employees of the Employer constitute an appropriate voting group for a self-determination election:

All full-time, regular part-time, and per diem registered nurses, including those who serve as relief charge nurses, employed by the Employer at its facilities located at 1111 East Stanley Boulevard, Livermore, California; 1133 East Stanley Boulevard, Livermore, California; and 4000 Dublin Boulevard, Dublin, California, excluding all other employees, nurse educators, patient navigators, infection control nurses, case managers, quality management specialists, lactation consultants, wound care nurses, RNs employed by registries or other agencies providing outside labor to the Employer, nurse administrators, managerial employees, confidential employees, office clerical employees, guards, and supervisors as defined in the Act.

DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above.

The ballot will ask:

Do you wish to be represented for purposes of collective bargaining by CALIFORNIA NURSES ASSOCIATION/NATIONAL NURSES UNITED (CNA/NNU)?

If a majority of valid ballots are cast for the Petitioner, they will be taken to have indicated the employees' desire to be included in the existing unit of RNs currently represented by CALIFORNIA NURSES ASSOCIATION/NATIONAL NURSES UNITED (CNA/NNU). If

⁵ The parties stipulated that the Employer, a California corporation with places of business located in Pleasanton, California; Livermore, California; and Dublin, California, provides health care and that during the last 12 months preceding the hearing, the Employer derived annual gross revenues in excess of \$250,000, and during that same period purchased and received goods valued in excess of \$5,000 which originated outside the State of California.

a majority of the valid ballots are not cast for representation, they will be taken to have indicated that the employees in the voting unit desire to remain unrepresented.

A. Election Details

The election will be held on September 19, 2018, from 6:30 a.m. to 8:30 a.m., 12 p.m. to 1:30 p.m., and 6:30 p.m. to 8:30 p.m. at “registration four” in urgent care located at 1133 East Stanley, Livermore, California.

B. Voting Eligibility

Eligible to vote are those in the unit who were employed during the payroll period ending **September 8, 2018**, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible to vote are all employees in the unit who have worked an average of four (4) hours or more per week during the 13 weeks immediately preceding the eligibility date for the election.

Employees engaged in an economic strike, who have retained their status as strikers and who have not been permanently replaced, are also eligible to vote. In addition, in an economic strike that commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

C. Voter List

As required by Section 102.67(l) of the Board’s Rules and Regulations, the Employer must provide the Regional Director and parties named in this decision a list of the full names, work locations, shifts, job classifications, and contact information (including home addresses, available personal email addresses, and available home and personal cell telephone numbers) of all eligible voters.

To be timely filed and served, the list must be *received* by the regional director and the parties by **September 13, 2018**. The list must be accompanied by a certificate of service showing service on all parties. **The region will no longer serve the voter list.**

Unless the Employer certifies that it does not possess the capacity to produce the list in the required form, the list must be provided in a table in a Microsoft Word file (.doc or docx) or a

file that is compatible with Microsoft Word (.doc or docx). The first column of the list must begin with each employee's last name and the list must be alphabetized (overall or by department) by last name. Because the list will be used during the election, the font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. A sample, optional form for the list is provided on the NLRB website at www.nlr.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015.

When feasible, the list shall be filed electronically with the Region and served electronically on the other parties named in this decision. The list may be electronically filed with the Region by using the E-filing system on the Agency's website at www.nlr.gov. Once the website is accessed, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions.

Failure to comply with the above requirements will be grounds for setting aside the election whenever proper and timely objections are filed. However, the Employer may not object to the failure to file or serve the list within the specified time or in the proper format if it is responsible for the failure.

No party shall use the voter list for purposes other than the representation proceeding, Board proceedings arising from it, and related matters.

D. Posting of Notices of Election

Pursuant to Section 102.67(k) of the Board's Rules, the Employer must post copies of the Notice of Election accompanying this Decision in conspicuous places, including all places where notices to employees in the unit found appropriate are customarily posted. The Notice must be posted so all pages of the Notice are simultaneously visible. In addition, if the Employer customarily communicates electronically with some or all of the employees in the unit found appropriate, the Employer must also distribute the Notice of Election electronically to those employees. The Employer must post copies of the Notice at least 3 full working days prior to 12:01 a.m. of the day of the election and copies must remain posted until the end of the election. For purposes of posting, working day means an entire 24-hour period excluding Saturdays, Sundays, and holidays. However, a party shall be estopped from objecting to the nonposting of notices if it is responsible for the nonposting, and likewise shall be estopped from objecting to the nondistribution of notices if it is responsible for the nondistribution. Failure to follow the posting requirements set forth above will be grounds for setting aside the election if proper and timely objections are filed.

RIGHT TO REQUEST REVIEW

Pursuant to Section 102.67 of the Board's Rules and Regulations, a request for review may be filed with the Board at any time following the issuance of this Decision until 14 days after a final disposition of the proceeding by the Regional Director. Accordingly, a party is not precluded from filing a request for review of this decision after the election on the grounds that it did not file a request for review of this Decision prior to the election. The request for review must conform to the requirements of Section 102.67 of the Board's Rules and Regulations.

A request for review may be E-Filed through the Agency's website but may not be filed by facsimile. To E-File the request for review, go to www.nlr.gov, select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the request for review should be addressed to the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001. A party filing a request for review must serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review.

Neither the filing of a request for review nor the Board's granting a request for review will stay the election in this matter unless specifically ordered by the Board.

Dated: September 11, 2018

/s/ Valerie Hardy-Mahoney

Valerie Hardy-Mahoney
Regional Director
National Labor Relations Board
Region 32
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Oakland, CA 94612-5224